

REMARKS/ARGUMENTS

Favorable reconsideration of this application, in view of the above amendments and in light of the following discussion, is respectfully requested.

Claims 1-11, 13, 14, and 16-20 are pending in the application. Claims 1, 3, 7, and 8 are currently amended. Claims 19 and 20 are new. Support for the amended claims and the new claims can be found in the published application at paragraphs [0007], [0022], and [0023] and Figures 1 and 2, for example. No new matter is introduced.

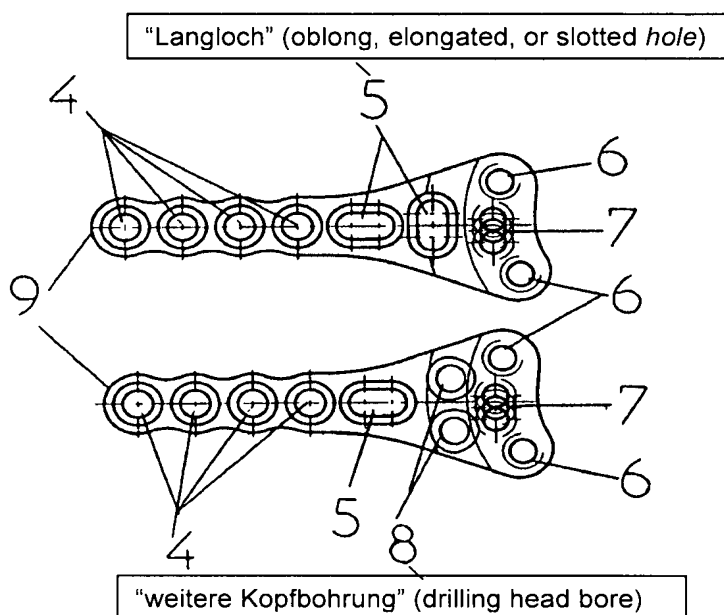
In the outstanding Office Action Claims 12 and 15 were rejected under 35 U.S.C. § 112, second paragraph, as indefinite. Claims 1-15 and 18 were rejected under 35 U.S.C. § 103(a) as unpatentable over Busch (DE 203 09 361) in view of Sommerkamp (U.S. Patent No. 5,197,966). Claims 16-17 are rejected under 35 U.S.C. § 103(a) as unpatentable over Busch, Sommerkamp, and Grusin (U.S. Patent No. 6,283,969).

With regard to the rejection of Claims 12 and 15 under 35 U.S.C. § 112(2), Claims 12 and 15 were canceled by the previous response.

In response to the Advisory Action mailed December 28, 2009, the independent claims are amended to clarify the structure of the recited triangular envelope. In particular, Claim 1 recites a longitudinal shaft and a triangular plate part including a distal section, first and second legs that each extend from respective ends of the distal section to an end of the longitudinal shaft, and a triangular envelope. Amended Claim 1 clarifies that the first and second legs include respective inner and outer surfaces, and that the respective inner surfaces extend from a center of the end of the longitudinal shaft to the respective ends of the distal section. Furthermore, Claim 1 recites that an interior surface of the distal section, the interior surface of the first leg, and the interior surface of the second leg define the triangular envelope.

MPEP § 2143.03 states that “(a)ll words in a claim must be considered in judging the patentability of that claim against the prior art.”<sup>1</sup> In particular, Claim 1 recites the respective **inner surfaces of the legs extend from a center of the end of the longitudinal shaft to the respective ends of the distal section**. Furthermore, the respective inner surfaces of the legs and an inner surface of the distal section **define the triangular envelope**. As these surfaces are particularly recited in the claims, their interpretation must be made in light of the recited features.

Turning to the applied references, Busch does not suggest or disclose the recited triangular envelope. As can be seen in the annotated copy of Figure 1 below, Busch illustrates a medical implant device that includes *oblong or slotted holes 5* and *drilling head bores 8*.<sup>2</sup>



**Fig. 1**

<sup>1</sup> Quoting *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

<sup>2</sup> See Busch at page 10.

The Office Action argues that various parts of the separately provided oblong holes 5 may be connected by arbitrary lines and thereby these lines teach the recited triangular envelope.<sup>3</sup> However, Busch does not suggest or disclose these lines. As shown above, the *interior surfaces* of the device shown above in Figure 1 only define the respective holes themselves and any further interpretation is the result of impermissible hindsight.<sup>4</sup>

To advance prosecution, amended Claim 1 clarifies that the inner surfaces of the legs extend from a center of the end of the longitudinal shaft to respective ends of the distal section. Clearly, Busch lacks a pair of surfaces that each extend from a center of an end of the longitudinal shaft to respective distal ends of the triangular plate part. In fact, Busch merely describes various holes which are not equivalent to the particularly recited triangular envelope. Thus recited, Busch does not suggest or disclose a triangular envelope defined by an interior surface of the distal section and respective interior surfaces of the legs. Furthermore, amended Claim 1 recites that the triangular envelope is scalene to which Busch is also silent.

Moreover, the recited triangular envelope is not a mere design choice but rather, as described in the specification as originally filed, Applicants acknowledge that a triangular plate part including a triangular envelope presents several advantages over conventional arrangements. Furthermore, a triangular envelope may not be simply combined with the features of Busch. MPEP § 2143.01(V) states “(i)f proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.”<sup>5</sup> Busch describes a specific device geometry whose features, such as oblong holes 5 and drilling head bores 8, provide

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<sup>3</sup> See the Office Action mailed August 13, 2009, at page 5.

<sup>4</sup> See also MPEP § 2142.

<sup>5</sup> Quoting *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

particular functions. Replacing the holes of Busch with a triangular envelope would likely render the purpose of the holes of Busch unsatisfactory for their intended purposes.

For at least the reasons discussed above, Busch does not suggest or disclose all of the features of Claim 1.

The Office Action applied Sommerkamp and Grusin for features other than the triangular envelope recited in Claim 1. Furthermore both Sommerkamp and Grusin fail to cure the deficiencies of Busch. As can be seen in Figure 1 of Sommerkamp and Figure 1 Grusin, neither of these references suggest or disclose the triangular envelope recited in Claim 1.

Based on the foregoing, even the combine teachings of Busch, Sommerkamp, and Grusin do not suggest or disclose the features of amended Claim 1. Accordingly, Applicants respectfully submit that Claim 1 is in condition for allowance.

Amended Claim 7 recites a plate for stabilizing distal radius fractures including a longitudinal shaft and a plate part that includes first and second legs that respectively extend away from an end the longitudinal shaft to define a Y-shape. Amended Claim 7 clarifies that the first and second legs include respective inner and outer surfaces, and that the respective inner surfaces extend from a center of the end of the longitudinal shaft to respective transverse sections. Furthermore, a triangular envelope is defined by the interior surface of the first leg, the interior surface of the second leg, and an arc shape of the first and second transverse surface sections. As stated above, the cited references do not suggest or disclose this feature. Accordingly, Applicants respectfully submit that amended Claim 7 is in condition for allowance.

Dependent Claims 2-6, 8-11, 13, 14, and 16-20 are respectfully submitted to be in condition for allowance for at least the same reasons as the independent claims from which

they depend. Moreover, the dependent claims recite additional features not suggested or disclosed by the cited references.

For the reasons discussed above, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal allowance. Therefore, a Notice of Allowance for Claims 1-11, 13, 14, and 16-20 is earnestly solicited.

Should Examiner Lawson deem that any further action is necessary to place this application in even better condition for allowance, he is encouraged to contact the Applicants' undersigned representative at the below listed telephone number.

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